

MT LEGISLATIVE HISTORY

Chapter 184 1989

Bill H 155 S _____

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Labor & Employment Relations

Hearing Date(s) Jan 24 ✓ C

Hearing Date(s) Feb 28 ✓ C

Jan 30 ✓ C

 C

 C

 C

 C

 C

Date Out Jan 30 ✓ C

Feb 28 ✓ C

Did this bill originate in an interim committee? Yes No

Committee

Report

HOUSE FINAL STATUS

3/09 SIGNED BY PRESIDENT
 3/09 TRANSMITTED TO GOVERNOR
 3/13 SIGNED BY GOVERNOR
 CHAPTER NUMBER 74 EFFECTIVE DATE: 3/13/89

HB 155 INTRODUCED BY SMITH, C., ET AL.
 NO WORKERS' COMPENSATION LIABILITY FOR RE-INJURY
 OF SAME BODY PART THAT PREVIOUSLY HEALED
 BY REQUEST OF WORKERS' COMPENSATION DIVISION

1/13 INTRODUCED
 1/14 REFERRED TO JUDICIARY
 1/16 FISCAL NOTE REQUESTED
 1/19 FISCAL NOTE RECEIVED
 1/20 FISCAL NOTE PRINTED
 1/24 HEARING
 1/30 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/01 2ND READING PASSED 77 22
 2/03 3RD READING PASSED 75 24

TRANSMITTED TO SENATE
 2/04 REFERRED TO LABOR & EMPLOYMENT RELATIONS
 2/28 HEARING
 3/01 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/03 2ND READING CONCURRED 47 1
 3/06 3RD READING CONCURRED 50 0

RETURNED TO HOUSE WITH AMENDMENTS
 3/08 2ND READING AMENDMENTS CONCURRED 86 2
 3/09 3RD READING AMENDMENTS CONCURRED 91 2

3/14 SIGNED BY SPEAKER
 3/15 SIGNED BY PRESIDENT
 3/15 TRANSMITTED TO GOVERNOR
 3/20 SIGNED BY GOVERNOR
 CHAPTER NUMBER 184 EFFECTIVE DATE: 10/01/89

HB 156 INTRODUCED BY SMITH, C., ET AL.
 REVISE OCCUPATIONAL HEALTH AND SAFETY LAWS
 BY REQUEST OF WORKERS' COMPENSATION DIVISION

1/13 INTRODUCED
 1/14 REFERRED TO LABOR & EMPLOYMENT RELATIONS
 1/26 HEARING
 2/01 COMMITTEE REPORT--BILL NOT PASSED
 2/02 ADVERSE COMMITTEE REPORT ADOPTED 66 25

HB 157 INTRODUCED BY SMITH, C., ET AL.
 REVISE WORKERS' COMPENSATION SUBSEQUENT INJURY LAW
 BY REQUEST OF WORKERS' COMPENSATION DIVISION

1/13 INTRODUCED
 1/14 REFERRED TO LABOR & EMPLOYMENT RELATIONS
 1/26 HEARING
 2/16 TABLED IN COMMITTEE

HB 158 INTRODUCED BY ADDY, ET AL.
 ALLOW PHONES, VENDING MACHINES, AND INFORMATION
 SERVICE IN REST AREAS

HOUSE BILL NO. 155

INTRODUCED BY SMITH, MARKS, AKLESTAD, THOMAS,
HAYNE, OWENS, PETERSON, SPRING

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

IN THE HOUSE

JANUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 14, 1989	FIRST READING.
JANUARY 21, 1989	ON MOTION BY CHIEF SPONSOR, REPRESENTATIVES MARKS, THOMAS, HAYNE, OWENS, PETERSON, AND SPRING; AND SENATOR AKLESTAD ADDED AS SPONSORS.
JANUARY 30, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 31, 1989	PRINTING REPORT.
FEBRUARY 1, 1989	SECOND READING, DO PASS.
FEBRUARY 2, 1989	ENGROSSING REPORT.
FEBRUARY 3, 1989	THIRD READING, PASSED. AYES, 75; NOES, 24.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 1, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 3, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN.

AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 8, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 9, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 155
2 INTRODUCED BY S. Smith
3 BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A
6 WORKERS' COMPENSATION INSURER IS NOT LIABLE FOR BENEFITS ON
7 AN EXISTING CLAIM TO AN EMPLOYEE WHO SUFFERS A NEW INJURY TO
8 A PREVIOUSLY INJURED PART OF THE BODY IF THE EMPLOYEE
9 PREVIOUSLY REACHED MAXIMUM HEALING; AND AMENDING SECTION
10 39-71-407, MCA."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 **Section 1.** Section 39-71-407, MCA, is amended to read:
14 "39-71-407. Liability of insurers -- limitations. (1)
15 Every insurer is liable for the payment of compensation, in
16 the manner and to the extent hereinafter provided, to an
17 employee of an employer it insures who receives an injury
18 arising out of and in the course of his employment or, in
19 the case of his death from such injury, to his
20 beneficiaries, if any.
21 (2) (a) An insurer is liable for an injury as defined
22 in 39-71-119 if the claimant establishes it is more probable
23 than not that:
24 (i) a claimed injury has occurred; or
25 (ii) a claimed injury aggravated a preexisting

1 condition.
2 (b) Proof that it was medically possible that a
3 claimed injury occurred or that such claimed injury
4 aggravated a preexisting condition is not sufficient to
5 establish liability.
6 (3) An employee who suffers an injury or dies while
7 traveling is not covered by this chapter unless:
8 (a) (i) the employer furnishes the transportation or
9 the employee receives reimbursement from the employer for
10 costs of travel, gas, oil, or lodging as a part of the
11 employee's benefits or employment agreement; and
12 (ii) the travel is necessitated by and on behalf of the
13 employer as an integral part or condition of the employment;
14 or
15 (b) the travel is required by the employer as part of
16 the employee's job duties.
17 (4) An employee is not eligible for benefits otherwise
18 payable under this chapter if the employee's use of alcohol
19 or drugs not prescribed by a physician is the sole and
20 exclusive cause of the injury or death. However, if the
21 employer had knowledge of and failed to attempt to stop the
22 employee's use of alcohol or drugs, this subsection does not
23 apply.
24 (5) An insurer is not liable for the payment of
25 compensation or medical benefits on an existing claim if the

1 employee receives a new injury, as defined in 39-71-119,
2 regardless of whether the new injury arose out of and in the
3 course of his employment, if the injury is to the same part
4 of the body and the worker previously reached maximum
5 healing. An employee who receives a new work-related injury
6 shall file a new claim."

7 **Section 2. Extension of authority.** Any existing
8 authority to make rules on the subject of the provisions of
9 [this act] is extended to the provisions of [this act].

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB155, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 155 would provide that a workers' compensation insurer is not liable for benefits on an existing claim to an employee who suffers a new injury to a previously injured part of the body if the employee previously reached maximum healing.

ASSUMPTIONS:

This bill is to address the results of one court case and does not change the normal claims process.

ESTIMATED EFFECT ON REVENUE AND/OR EXPENDITURES:

There is no way to estimate the cost savings. This is in response to one court decision which extended the liability of the employer's insurance carrier for a non-job related injury to the same part of the body. The impact on the trust fund would be a cost savings but would depend on the number of cases in the future which met the intent of the statutes.

Ray Shackelford

RAY/SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

1/19/89

DATE

Clyde B. Smith

CLYDE B. SMITH, PRIMARY SPONSOR

1-26-89

DATE

Fiscal Note for HB155, as introduced

HB 155

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 108	1-10	1-17	1-18			1-18					
HB 97	1-11	1-26	1-26			1-26					
HB 112	1-11	1-19	TABLED ON 2-9								
HB 122	1-12	1-19	1-25	1-25							
HB 123	1-12	1-25	1-25	1-25							
HB 127	1-12	1-25	1-25	1-25							
HB 134	1-13	1-25	TABLED ON 1-25								
HB 135	1-13	1-19	1-19	1-19							
HB 146	1-13	1-19	1-19			1-19					
HB 147	1-13	1-26	1-26	1-26							
HB 152	1-13	1-25	1-25	1-25							
HB 153	1-14	1-24	TABLED ON 1-24								
HB 154	1-14	1-24	1-30			1-30					
HB 155	1-14	1-24	1-30			1-30					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 24, 1989, at
8:05 a.m.

ROLL CALL

Members Present: All members were present with the following
exception:

Members Excused: Rep. Mary McDonough

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 172

Presentation and Opening Statement by Sponsor:

Rep. Bernie Swift, House District 64 stated that HB 172 is an act making it a criminal mischief to purposely or knowingly insert into a tree, log, or piece of wood that is intended to be harvested, processed or manufactured, a substance that is hard enough to damage a saw or other equipment. Rep. Swift directed the Committee's attention to page 1, line 22 through line 1 of page 2. What this is saying is that if something is placed in a standing tree or a piece of tree that has been severed or cut into lengths and is intended to be processed, thus damaging the processing agent or the individual, will be known as criminal mischief. This is just adding a section to the law that is presently on the books. Rep. Swift commented that since 1985-1986 in the area that he represents, there has been about 3 or 4 different incidents of this type of problem arising. This particular type of problem is not known to the sawyers nor to the sawmill processors. When the saw hits the foreign material, the teeth of the saw (which are 1/2 inch thick or larger) fly into the air like a cannon blowing up a shell. This results in thousands of dollars in damage, plus personal injury and can only be avoided by intensive detection which takes much time. They never know if the material is in there or not. Rep. Swift stressed that this is not a simple bill, but it is a very important bill and it addresses key problems that are getting worse year by year.

for and generally been granted by the Supreme Court.

Rep. Mercer responded to Rep. Addy's comment by stating that first, when the bill was addressed, he read the bill and it was unclear to him who would be responsible in granting the stay. Secondly, the title of the bill, which says that the workers' comp judge would be able to issue a stay pending an appeal. Third, he looked at Rule 7-B and it is wishy-washy as to who actually does the stay. However, in the last sentence in Rule 7-B it states that the Supreme Court may modify any order that is made under that section. Rep. Mercer, therefore, assumed that the amendments that he proposed make it absolutely clear that if a person wants a stay, they go to the workers' comp judge. That is his option, and once the case is on appeal then the Supreme Court could change it if they so chose under Rule 7-B. If we don't amend this bill, he doesn't see how anyone knows who grants the stay.

Rep. Addy expressed that it appears to him that they have confused the situation more than they have clarified it. Presently it is very clear that the Workers' Comp judge can order the stay pending post trial motions and for 30 days thereafter, which is the appeal period. Thereafter, the only one that has that authority is the Supreme Court. They are mixing the powers of the Supreme Court that has jurisdiction after the appeal was taken, and a court that no longer has that; the Workers' Comp court.

Rep. Mercer stated that he just wants the bill to be as clear as possible. He wondered if the attorneys could be consulted as to what their intention is. If they could hold off on further action on the bill they could talk to the attorneys.

Recommendation and Vote: Rep. Brown suggested to the Committee to HOLD any further action on HB 154.

HEARING ON HOUSE BILL 155

Presentation and Opening Statement by Sponsor:

Rep. Clyde Smith stated that the purpose of HB 155 is to clarify the liability of the insured employer on an existing claim when an employee suffers a new injury to the same part of the body. This is in response to a Supreme Court decision, Guild vs. an insurance carrier. In this case, the injured worker sustained another injury at a parade while stepping out of the car. The Supreme Court overturned the Workers' Compensation Court and stated the following: "We owe that under the law of Montana the fact that a claimant has reached maximum healing does not eliminate the employers future liability for temporary total disability benefits, whereas here a subsequent non-employment related event caused aggravation of the first injury". Such a case is not comparable to a case where there is a second industrial

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injury covered by Workman's Compensation. Rep. Smith commented that the underlying problem is that this decision appears to create unlimited liability for non-job related injuries even though the claimant had reached maximum healing. Additionally, there could be serious financial impacts on this system because of entitlement to benefits, particularly in view of the 1987 legislation which restricted the closure of claims through lump sums and compromise release statements.

Testifying Proponents and Who They Represent:

Bill Palmer, Interim Administrator, Workers' Compensation
Oliver Goe, Montana Munciple Insurance Authority
Jacqueline Terrell, American Insurance Association
George Wood, Executive Secretary, Montana Self Insurers Assoc.
Jim Murry, Executive Secretary, Montana AFLCIO

Proponent Testimony:

Bill Palmer stated that HB 155 attempts to address the problem of when an injured worker has reached maximum healing, is released by the physician, returns to work supposedly healed, and then at some subsequent time in his life, he re-injures that particular part of his body. What they are trying to get at with this bill is once a claimant has reached maximum healing, the insurer at risk at the time of the original injury is no longer responsible for any subsequent injuries or conditions that may arise out of either a workers' comp or industrial injury, or something that occurred outside of an industrial injury. Of course, if it was an industrial injury that occurred after that maximum healing, then a new insurer would be liable. Mr. Palmer presented as testimony EXHIBIT 3.

Oliver Goe, an attorney with Browning, Kaleczyc, Barry and Hogan, on behalf of the Montana Munciple Insurance Authority spoke in favor of HB 155. He stated that it is very important that when a worker receives an injury and has reached maximum healing and has returned to work, the insurer's liability must be cut off at some point. That is the real purpose of this bill. As other proponents have indicated, there is a possibility that the language contained within the bill is perhaps a little broad, and something which more fully articulates the real intent can be formulated.

Jacqueline Terrell presented for the Committee proposed amendments listed as EXHIBIT 4.

George Wood stated that the Montana Self Insurers Assoc. strongly supports the concept of this bill; however, they do have some concern about the language. They certainly think an amendment would be in order.

Jim Murry commented that the Montana AFLCIO does not have any

problems with the concept of this bill, but they too have trouble with the language that is presently in the measure. He hoped that the committee would see its way clear to assign this bill to a sub-committee so they could continue to work on it.

Testifying Opponents and Who They Represent:

Norm Grosfield, Helena Attorney
Michael Sherwood, Montana Trial Lawyers Association

Opponent Testimony:

Norm Grosfield, an attorney practicing in Helena, stated that his practice involves both claimant in defense and the Workers' Compensation matters. He stated that he arises in opposition to this bill only in the sense that democracy should have two sides. He agrees with the concept of what is attempting to be obtained, but disagrees with the language. He feels the language basically precludes all future liabilities for an insured carrier after an intervening cause even though that intervening cause may be very minor. The language seems to be totally precluded and the drafters of the bill, as he understands it, did not intend it to be read that way.

Michael Sherwood stated that the Montana Trial Lawyers Association opposes this bill for the same reasons that Mr. Grosfield went over. They oppose the specific language, not the intent. He asked that the Committee delay action on the bill until such language can be agreed upon. He stated that there isn't any reason for a major injury to fall back on an insurers maximum healing, but there are certainly policy consideration that should allow at least a continuation of the benefits and thinks the language can be worked out.

Questions From Committee Members: Rep. Eudaily questioned the term "maximum healing". What does it mean? Rep. Smith responded that maximum healing means the occurrence when an individual is healed as well as they are going to get given the circumstances.

Rep. Eudaily asked who the person is that decides if maximum healing has been reached. Rep. Smith stated that the decision is made by a physician.

Rep. Hannah questioned if the courts address whether or not there is ever a possibility for an end to benefits for a work related injury. Mr. Wood responded to Rep. Hannah's question by stating that they set up two standards. If the subsequent incident to this person had been industrial, they would say that it was a new injury and it wouldn't go back to the old. However, if the injury was outside the course and scope of employment, then it would go back to the original insurer. If it is an accident, it is under the

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act. If it is not an accident, it isn't under the act.

Closing by Sponsor: Rep. Smith agreed that as he pointed out before, there are some language problems with the bill that he hopes can be worked out in sub-committee.

HEARING ON HOUSE BILL 189

Presentation and Opening Statement by Sponsor:

Rep. Rice stated that HB 189 is a bill to increase the sentence for certain types of incest crimes. Incest, as defined, includes a whole range of sexual conduct between relatives. This bill is focusing on a narrow situation in which the victim is under 16 years of age and the offender is 3 or more years older than the victim, or if the offender has inflicted bodily harm. The reason for increasing the penalties for that particular type of incest crime is that presently in the State of Montana, the penalty for incest is actually less than the penalty for sexual assault. When incest crimes arise, county attorneys are electing to charge these people with sexual assault instead of charging them under the incest statutes even though that is the fact or the event that has occurred. Rep. Rice feels that it should be brought onto the table and charged as incest and the penalty should be the equivalent of the sexual assault penalty.

Testifying Proponents and Who They Represent:

John Connor, Dept. Justice, County Prosecutors Service Bureau

Proponent Testimony:

John Connor stated that the present statute with respect to the penalty under incest, was a carryover from the old law. The ten year penalty simply does not recognize the severity of the offense that we are beginning to see more and more of all the time. With a ten year penalty, it is simply not possible to get an offender in the sexual assault treatment program at the state prison if the person is sentenced to prison. Experts tell us in this area that curing people who commit these kinds of crimes is virtually non-existent, that they are contained and controlled with therapy, but they are not cured. The treatment program that is available at the prison is a good one. Mr. Connor commented that they are trying to get more people into it all the time, but unless the court has the option of passing the sentence that will allow them the time to wait out the entry into the program and complete the program, they just can't get into it. Unfortunately, when someone is sentenced to ten years in prison, they are basically assuming these people are non-dangerous and parole eligible within 2 years or less if they accumulate an average amount of good time.

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DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 24, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

DIVISION TESTIMONY

HOUSE BILL 155

IN THE PAST, THE SUPREME COURT HAS APPLIED THE FOLLOWING STANDARD WHEN A CLAIMANT REINJURED OR AGGRAVATED AN ORIGINAL INJURY. THE ISSUE WAS WHETHER THE INSURER ON THE ORIGINAL INJURY WAS LIABLE OR WHETHER THE ACCIDENT OR INCIDENT WAS A NEW INJURY AND THE LIABILITY OF THE NEW EMPLOYER'S INSURER.

THE STANDARD APPLIED WAS ONCE A CLAIMANT REACHED MAXIMUM HEALING, THE INSURER AT RISK AT THE TIME OF THE ORIGINAL INJURY IS NO LONGER RESPONSIBLE FOR ANY SUBSEQUENT INJURIES OR CONDITIONS.

THIS STANDARD MAKES GOOD SENSE AND SHOULD BE APPLIED REGARDLESS OF WHETHER THE SUBSEQUENT INJURY IS JOB RELATED OR NOT. IN THE GUILD DECISION, THE SUPREME COURT DIFFERENTIATED BETWEEN A SUBSEQUENT INJURY ON THE JOB vs A NON-JOB RELATED INJURY. THIS DECISION COULD PLACE THE ORIGINAL EMPLOYER'S INSURER AT RISK FOR ANY OTHER FUTURE ACCIDENT WHICH WAS NON-JOB RELATED. IF AN INJURED WORKER IS REINJURED OFF THE JOB, SOME OTHER INSURANCE SHOULD BE RESPONSIBLE, BE THAT HEALTH AND ACCIDENT OR LIABILITY COVERAGE, BUT THE WORKERS' COMPENSATION SYSTEM SHOULD NOT BE AT RISK FOR THIS UNMEASURABLE AND UNKNOWN FUTURE LIABILITY. THE QUESTION IS WHETHER THE SYSTEM CAN AFFORD, AFTER THE CLAIMANT REACHES MAXIMUM HEALING, TO BE LIABLE FOR NON-JOB RELATED INJURIES AT HOME, OR CAR ACCIDENTS, ETC., WHICH MAY HAPPEN IN THE FUTURE.

PROPOSED AMENDMENT TO
HOUSE BILL NO. 155
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE N. TERRELL

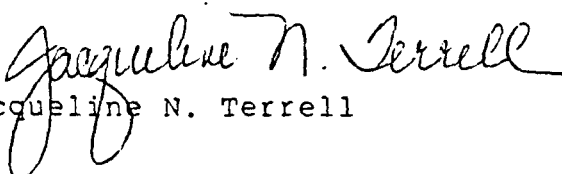
EXHIBIT 4
DATE 1-24-89
HB 155

1. Page 2, line 24.

(5) An insurer is not liable ON AN EXISTING CLAIM for the
payment of compensation or medical benefits UNDER THIS CHAPTER on
an existing claim if the WHEN AN employee receives a new injury,
as defined in 39-71-119, regardless of whether the new injury are
se out of and in the course of his employment, if the injury is
to the same part of the body and the worker previously reached
maximum healing, REGARDLESS OF WHETHER THE NEW INJURY AROSE OUT
OF AND IN THE COURSE OF EMPLOYMENT. An employee WHO HAS REACHED
MAXIMUM HEALING AND who receives a new work-related injury TO THE
SAME PART OF THE BODY FOR WHICH HE HAS RECEIVED BENEFITS shall
file a new claim FOR DETERMINATION OF BENEFITS UNDER THIS
CHAPTER.

Submitted to House Judiciary committee for hearing on house
bill 155, January 24, 1989, 8:00 o'clock a.m.

Respectfully submitted,


Jacqueline N. Terrell

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 155

DATE JAN. 24, 1989

SPONSOR REP. SMITH

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 30, 1989, at 9:05 a.m.

ROLL CALL

Members Present: All members were present with the exception of the following:

Members Excused: Rep. Hannah

Members Absent: None

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 204

Presentation and Opening Statement by Sponsor:

Rep. Cobb stated that HB 204 was brought to him at the request of the Department of SRS. HB 204 allows SRS to have a lien rather than a subrogation interest in order to recover benefits from a recipient. Currently, SRS has a subrogation interest in recipient recovery against libel third parties to the extent that the Dept. has paid medical benefits. This law also changes the right of subrogation to a lien, taking effect upon notice. Additionally, it strengthens notice requirements of recipients and the representatives who receive claims or file suits for recovery. It also removes the provision guaranteeing 1/3 of the settlement or recovery to the recipient. The priority of the lien will be the same as what hospitals and doctors have right now. Rep. Cobb presented as EXHIBIT 1 proposed amendments for the Committee's consideration.

Testifying Proponents and Who They Represent:

Russ Cater, Chief Legal Council for the Dept. of SRS

Proponent Testimony:

Russ Cater, in support of HB 204 stated the Dept. of SRS administers two medical assistance programs. One, is the medicaid program which is a joint federal and state funded program. That is where the bulk of their medical expenses are. In addition, they also administer a general relief

DISPOSITION OF HOUSE BILL 155

Motion: A DO PASS motion was made by Rep. Addy, motion was seconded by Rep. Darko.

Discussion: Rep. Brown stated that Rep. Smith drafted amendments for the Committee's consideration (EXHIBIT 5). The intent of the amendment, according to Rep. Smith, is to provide that an insurer has no liability for a new industrial injury suffered by an employee previously injured in an industrial injury who has reached maximum healing.

Amendments, Discussion, and Votes: Rep. Addy moved the amendments proposed by Rep. Smith (EXHIBIT 5), motion seconded by Rep. Darko.

Rep. Addy expressed his concern with the new language of the bill. With the new language they are going to be saying that unless they couldn't recover from anybody under their homeowners policy, they have no recovery at all; when in fact it is something that they were exposed to and something that they suffered as a result of that pre-existing injury.

Rep. Mercer stated that in the original language of the bill, maximum healing doesn't necessarily mean that the person is completely better. It means that it won't heal anymore. If a person has injured his shoulder and moved on from that particular job to a different one, and his shoulder is injured on the new job, then that is a new claim. Under the current law, if that same person is away from his job and re-injures his shoulder, then Workers' Comp is going to have to pay for that.

Rep. Brown commented that Rep. Mercer was correct and that is what the court has ruled in one particular case. That second injury would not have occurred if that person did not have a vulnerable point in their body.

Rep. Darko asked if total healing was quantified with a percentage of normal healing. A person may reach maximum healing, but still only be 60% of what they would be normally. Rep. Addy stated that to his knowledge, the way they evaluate those claims, especially physical therapists, have a very sophisticated evaluation proceeding where they lift weights and do certain exercises to determine how strong various parts of their body are. They are then assigned a percentage figure which amounts to a disability of x percent.

Rep. Boharski stated that it is his impression that under the initial claim of Workers' Comp, they already received the benefits that they were entitled to whether they be economical or non-economical. If something does happen later on, that shouldn't make any difference because they

have already received some type of compensation for the disability, whether it be 40%, 60%, or 80% of maximum healing. They receive some type of case settlement and he doesn't see any reason why there is liability forever. We never know when this is over with. Someone could keep going back claiming on that initial party, time after time. To him they get their settlement the first time.

Rep. Addy, in reply to Rep. Boharski's concern, stated that Workers' Compensation benefits are not determined by the amount of actual loss they had beyond a certain point, it is tied to the average weekly wage. It isn't determined on the basis of what they actually made, unless they made less than the average weekly wage. When a person has Workers' Comp benefits, they figure out the impairment and multiply by the average weekly wage times so many weeks, 500 weeks in the case of temporary total disability. It doesn't have any relationship to the economic reality of the situation. In the second case they have that. The Workers' Comp people can ask for compensation up to the amount that they have paid as a subrogated interest.

Rep. Boharski asked if an injury is suffered on the job, do they also have an angle to file a civil suit? Rep. Addy responded no, if they suffer the injury on the job they are limited to Workers' Comp only. If everybody were to get upset with the Workers' Comp program, then why not just do away with it and let the employee sue the employer directly? If that were the case the employers would be going broke and out of business. Workers' Comp was designed to guarantee the worker that they would get something and to guarantee the employer that they would not be run out of business if they had one catastrophic accident on the job site.

Rep. Mercer stated that this bill comes down to a question of where they want to draw the line on the benefits. If they want to tighten up the benefits, then they should vote for this bill. If they want to relax the benefits, then they should be against the bill. Rep. Mercer stated that he personally feels they need to tighten up Workers' Comp and that it is a mistake to look at this bill without looking at the others. Is it really appropriate for the Judiciary Committee to consider this policy question without having the other matters of Workers' Comp before it?

Recommendation and Vote: Rep. Wyatt moved to TABLE HB 155, motion seconded by Rep. Addy. A Roll Call Vote was taken and FAILED on a tie vote.

Amendments, Discussion, and Votes: Rep. Mercer stated that he has some reservations about this bill as he does not know the whole Workers' Comp reform plan. He commented that he has to favor it because they have to do something with respect to Workers' Comp benefits and the expansion on the Workers' Comp program. This is not a situation where they

can blame it on out of state insurance companies because this is their own company. It is really based on how much benefits they pay out and they have to tighten up the lines. It is not improper to say that in light of circumstances in Montana, if a person is injured they are going to take care of until maximum healing. If they are injured again on the job, then they will be taken care of. If they get injured off the job, hopefully they will have their own health program and it will be their responsibility. Unless they do tighten it up, it is just going to continue to get away from them. It is already \$157 million in the red.

Rep. Rice commented that Workers' Compensation was never intended to be an insurance program for all possibilities of injury. That is why he feels everybody who works in the system came in and supported this bill, as well as SRS, the ALPCIO, Jim Murry and the insurers. Mr. Murry knows as well as the other people involved that Workers' Compensation does not cover all accidents and all possibilities. That is one of the reasons they are getting into trouble. All this bill is doing is limiting the coverage for the original intention of the Workers' Comp program.

A vote was taken on the proposed amendments offered by Rep. Smith (EXHIBIT 5) and PASSED unanimously.

Recommendation and Vote: Rep. Eudaily moved HB 155 DO PASS AS AMENDED, motion seconded by Rep. Knapp. A Roll Call Vote was taken and CARRIED with 10 voting aye and 6 voting nay.

DISPOSITION OF HOUSE BILL 265

Motion: A DO PASS motion was made by Rep. Strizich, motion seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily moved to amend page 3, line 20, following "obligate" insert funding from. Motion was seconded by Rep. Gould and PASSED unanimously.

Rep. Boharski stated that he has an overall concern with this bill and has a real problem with the Dept. of Family Services. It appears to him that the local district courts are trying to take care of legal problems with placing youths. Then there is the State Dept. of Family Services telling them what they can and cannot do at the discretion of the funds that they want to allow. It seems to him that the county is going to be liable for expenses. The amendment just makes it more clear as to how messed up this bill really is.

Rep. Strizich commented that HB 265 does not affect current law in terms of substantive affect. The philosophy that was put forward when the new Dept. of Family Services was created

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 30, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

January 30, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 155 (first reading copy -- white) do pass as amended.

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Pages 2, line 24, through line 6 of page 3.

Strike: "An" on line 24 of page 2 through "claim" on line 6 of page 3

Insert: "If a claimant who has reached maximum healing suffers a subsequent non-work related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent non-work related injury"

EXHIBIT 5
DATE 1-30-89
HB 155

PROPOSED AMENDMENT TO HOUSE BILL NO. 155

1. Page 2, line 24, through page 3, line 6.

Strike: all language in subsection (5).

Insert: "(5) If a claimant who has reached maximum healing suffers a subsequent non-work related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent non-work related injury."

Amend Title accordingly.

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 30, 1989

BILL NO. HB 155

NUMBER 1

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI		X
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		
REP. PAULA DARKO	X	
REP. RALPH EUDAILY		X
REP. BUDD GOULD		X
REP. TOM HANNAH		
REP. ROGER KNAPP		X
REP. MARY McDONOUGH	X	
REP. JOHN MERCER		X
REP. LINDA NELSON		X
REP. JIM RICE		X
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN	X	

TALLY

8

8

Julie Enge
Secretary

Dave Brown
Chairman

Motion: Rep. Wyatt moved to TABLE, seconded by
Rep. Addy. Motion FAILS on a tie vote.

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 30, 1989 BILL NO. HB 155 NUMBER 2.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN		X
REP. OLE AAFEDT	X	
REP. WILLIAM BOHARSKI	X	
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		
REP. PAULA DARKO		X
REP. RALPH EUDAILY	X	
REP. BUDD GOULD	X	
REP. TOM HANNAH		
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH		X
REP. JOHN MERCER	X	
REP. LINDA NELSON	X	
REP. JIM RICE	X	
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH		X
REP. DIANA WYATT		X
REP. DAVE BROWN, CHAIRMAN		X

TALLY

10 6

Julie Emge
Secretary

Dave Brown
Chairman

Motion: Rep. Eudaily moved DO PASS AS AMENDED,
seconded by Rep. Knapp. Motion CARRIES.

LABOR COMMITTEE
51st LEGISLATIVE SESSION

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CONCURR- IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURR- IN AMME- ED DATE
HB 21	1-26-48	2-2-4	2-4					2-4			
HB 99	1-27-89	2-2, 2-4	2-4							2-4	
HB 28	1-31-89	3-21, 3-22	3-22							3-22	
HB 154	2-6-89	2-28, 2-28	2-28							2-28	
HB 155	2-6-89	2-28, 2-28	2-28							2-28	
HB 348	2-7-89	3-2, 3-2	3-2					3-2			
HB 243	2-8-89	2-28, 3-2	3-2							3-2	
HB 391	2-9-89	3-2, 3-2	3-2					3-2			
HB 347	2-10-89	3-2, 3-2 3-7	3-7 Reconsidered 3-2					3-2		Reconsidered 3-7	
HB-377	2-28-89	3-7, 3-7 3-9	3-9					3-9			
HB 529	2-28-89	3-14, 3-21 3-22	3-22								
HB 541	2-28-89	3-7, 3-7 3-9	3-9					3-9			
HB 508	2-28-89	3-9, 3-16	3-16								3-16
HB 639	2-28-89	3-14, 3-16	3-16						3-16		
HB 677	2-28-89	3-14, 3-16	3-16					3-16			
HB 700	2-28-89	3-16, 3-21	3-21							3-21	
HB 710	2-28-89	3-14, 3-21	3-21							3-21	
HB 249	2-28-89	3-9, 3-9	3-9					3-9			

2

1 HOUSE BILL NO. 155

2 INTRODUCED BY SMITH, MARKS, AKLESTAD, THOMAS,

3 HAYNE, OWENS, PETERSON, SPRING

4 BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A
7 WORKERS' COMPENSATION INSURER IS NOT LIABLE FOR BENEFITS ON
8 AN EXISTING CLAIM TO AN EMPLOYEE WHO SUFFERS A NEW INJURY TO
9 A PREVIOUSLY INJURED PART OF THE BODY IF THE EMPLOYEE
10 PREVIOUSLY REACHED MAXIMUM HEALING; AND AMENDING SECTION
11 39-71-407, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 39-71-407, MCA, is amended to read:

15 "39-71-407. Liability of insurers -- limitations. (1)

16 Every insurer is liable for the payment of compensation, in
17 the manner and to the extent hereinafter provided, to an
18 employee of an employer it insures who receives an injury
19 arising out of and in the course of his employment or, in
20 the case of his death from such injury, to his
21 beneficiaries, if any.

22 (2) (a) An insurer is liable for an injury as defined
23 in 39-71-119 if the claimant establishes it is more probable
24 than not that:

25 (i) a claimed injury has occurred; or

1 (ii) a claimed injury aggravated a preexisting
2 condition.

3 (b) Proof that it was medically possible that a
4 claimed injury occurred or that such claimed injury
5 aggravated a preexisting condition is not sufficient to
6 establish liability.

7 (3) An employee who suffers an injury or dies while
8 traveling is not covered by this chapter unless:

9 (a) (i) the employer furnishes the transportation or
10 the employee receives reimbursement from the employer for
11 costs of travel, gas, oil, or lodging as a part of the
12 employee's benefits or employment agreement; and

13 (ii) the travel is necessitated by and on behalf of the
14 employer as an integral part or condition of the employment;
15 or

16 (b) the travel is required by the employer as part of
17 the employee's job duties.

18 (4) An employee is not eligible for benefits otherwise
19 payable under this chapter if the employee's use of alcohol
20 or drugs not prescribed by a physician is the sole and
21 exclusive cause of the injury or death. However, if the
22 employer had knowledge of and failed to attempt to stop the
23 employee's use of alcohol or drugs, this subsection does not
24 apply.

25 ~~(5) An insurer is not liable for the payment of~~

1 ~~compensation or medical benefits on an existing claim if the~~
2 ~~employee receives a new injury, as defined in 39-71-1197~~
3 ~~regardless of whether the new injury arose out of and in the~~
4 ~~course of his employment, if the injury is to the same part~~
5 ~~of the body and the worker previously reached maximum~~
6 ~~healing. An employee who receives a new work related injury~~
7 ~~shall file a new claim~~ IF A CLAIMANT WHO HAS REACHED MAXIMUM
8 HEALING SUFFERS A SUBSEQUENT NONWORK-RELATED INJURY TO THE
9 SAME PART OF THE BODY, THE WORKERS' COMPENSATION INSURER IS
10 NOT LIABLE FOR ANY COMPENSATION OR MEDICAL BENEFITS CAUSED
11 BY THE SUBSEQUENT NONWORK-RELATED INJURY."

12 NEW SECTION. **Section 2.** Extension of authority. Any
13 existing authority to make rules on the subject of the
14 provisions of [this act] is extended to the provisions of
15 [this act].

-End-

MINUTES
MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Senator Gary C. Aklestad, Chairman, on
February 28, 1989, at 1:00 P.M. in the State Capitol.

ROLL CALL

Members Present: The members present were: Senator Tom Keating, Senator Sam Hofman, Senator J.D. Lynch, Senator Gerry Devlin, Senator Bob Pipinich, Senator Richard Manning, Senator Chet Blaylock, and Senator Gary C. Aklestad, Chairman.

Members Excused: Senator Dennis Nathe was excused to
present SB 203 in the Old Supreme Court Room.

Members Absent: No members were absent.

Staff Present: Tom Gomez, Legislative Council, staff
analyst.

Announcements/Discussion: There were no announcements or
discussion.

HEARING ON HOUSE BILL 243

Presentation and Opening Statement by Sponsor:

Representative Jim Rice, House District No. 43, chief sponsor of HB 243, stated supportive employment is a concept catching on nationwide supporting severely disabled individuals. HB 243 incorporates the supportive employment definition into the statute. The process of rehabilitating an individual, who is severely disabled, starts by the person working in a sheltered workshop. The sheltered workshop is a nonprofit entity paid by the state to give training to DD individuals. Many individuals reach the point of training enabling the client to leave the sheltered workshops to obtain private industry and competitive employment. The state loses the ability to support these individuals in any way. Once these people leave the sheltered workshops, supportive services are sometimes still needed. Transportation, uniform purchase, and job coach's help, enabling the individual to get on their feet, are some needs an individual may have entering the work market. SB 243 authorizes SRS to fund Supportive Services from existing

claims. The stay, as Representative Smith testified, is needed most when the division litigates old law claims. HB 154 does not leave the claimant without recourse: HB 154 refers to Rule 7(b), Montana Rules of Civil Procedure, which allows the Supreme Court to suspend, modify, restore any order the Workers' Compensation Court may issue regarding a stay of execution.

Michael Sherwood, Montana Trial Lawyers Association, stated when HB 154 was amended in the House, after being considered by labor, trial lawyers, Norm Grosfield, and others, compromises were reached. The Trial Lawyers Association now stand behind HB 154.

Jim Murry, Executive Secretary of the Montana AFL-CIO, stated support of HB 154.

Oliver Goe, Montana Municipal Insurance Authority, stated the Authority is a coalition of approximately one hundred Montana cities and towns providing self insurance both for Workers' Compensation and liability. Mr. Goe stated he feels HB 154 accomplishes what the Legislature intended the Workers' Compensation to be in the first place, having the same rights of appeal to obtain a stay of appeal on appropriate bonds. The court stated the insurer is going to have to take the risk in the appeal if it should prevail.

George Wood, Executive Secretary, Montana Self Insurers Association stated support of HB 154, as amended. HB 154 is part of the bill package agreed upon by all segments of Workers' Compensation.

Katrina Martin, speaking in behalf of Norm Grosfield, stated support of HB 154.

Closing by Sponsor:

Representative Smith urged support of HB 154.

HEARING ON HOUSE BILL 155

Opening Statement by Sponsor:

Representative Clyde Smith, House District No. 5, stated HB 155 is to clarify a liability insurer employee on an existing claimant when an employee suffers a new injury on the same part of the body. HB 155 is in response to the Supreme Court decision in . The case concerned the individual sustaining another injury to the same part of the body. The Supreme Court over turned the Workers' Compensation Court ruling, stating the following: "We hold

that under the law of Montana, the fact that the injury has reached maximum healing does not eliminate the employers future liability for temporary total disability benefits..."

Testimony:

Jim Murphy, Bureau Chief for the Workers' Compensation, stated the purpose of HB 154 is to clarify the Liability of the employers insurer when the previously injured claimant receives a new non-job related injury to the same part of the body. The issue is whether the insurer on the original injury was liable or whether the accident or incident was a new injury and the liability of the new employer's insurer. The Supreme Court has applied the following stand to determine whether the claimant was reinjured or aggravated an original injury. The standard applied was whether the claimant reached maximum healing. If the claimant may have reached maximum healing, the insurer, at risk at the time of the original injury, was no longer responsible for any subsequent injuries or conditions.

This standard makes good sense and should be applied regardless of whether the subsequent injury is job related or not. In the Reil decision, the Supreme Court differentiated between a subsequent injury on the job vs a non-job related injury. This decision could place the original employer's insurer at risk for any other further accident which was non-job related injury. This decision could place the original employer's insurer at risk for any other further accident which was non-job related. If an injured worker is reinjured off the job, some other insurance should be responsible, health and accident or liability coverage. The Workers' Compensation system should not be at risk for this unmeasurable and unknown future liability. The question is whether the system can afford, after the claimant reaches maximum healing, to be liable for non-job related injuries at home, or car accidents, etc., which may happen in the future.

George Wood, Executive Secretary, Montana Self Insurers, stated Mr. Murphy explained the problems created by the Supreme Court decision, and the fact, liability would go on forever without some change in statutes. The Association stands in support of HB 154.

Oliver Goe, Montana Municipal Insurance Authority, stated HB 155 is important, rendering payment for Workers' Compensation benefits for truly work related injuries of future injuries suffered to the same part of the body. The genesis of the problems is from the Supreme Court decision concerning when the employee has reached maximum healing and has gone back to work, but receives another injury. The

Authority believes HB 155 is a strong, necessary bill, one that would not limit medical wage loss benefits occasioned by the work related injury.

Jim Murry, Executive Secretary of the Montana AFL-CIO, stated support of HB 155.

Michael Sherwood, Montana Trial Lawyers Association, stated the Association approves of the amended legislation.

List of Testifying Opponents and What Group They Represent:

Mike Hankins, representing the Jockey's Guild.

Testimony:

Mike Hankins, Jockey's Guild, stated the Jockey's Guild is the main body representing all riders involved in horse racing. The Guild is concerned with the title's wording of HB 155. Hankins stated he has ridden for over 40 years and have been injured 23 times. Hankins stated he has been under every workers' compensation policy available, and he is not unusual. In the world of the jockey and gallop rider, the most frequent part of the body that is injured and has previously reach maximal healing is the collar bone. Mr. Hankin stated that every part of his body has been injured at least twice. Basically, if this bill is passed, any rider that goes down and reinjures a previously injured part of the body will lay the burden of proof, sustaining the injury, will be laid upon him and his council. The reason why the guild is concern is because in New York a similar bill passed in the New York Legislature. The response of the guild at that time was to have guild members guarantee anyone previously injured and not covered by the New York Statute would have coverage by the Guild. This proved to be very costly. The cost was transmitted through the riders, through the horse trainers ,at a cost of \$31. In Montana, the rider runs for the average purse of \$750. If the guild is forced to underwrite injuries because of a lack of coverage on pre-existing injuries, the guild will pass the coverage on through the jock mounts to the Montana owners and trainers at an estimated cost \$60. The Montana racing industry cannot sustain the impact. Before the jockeys will ride without proper coverage, the jockeys will force the trainer and rider to absorb the cost, creating a tremendous financial burden.

Questions from Committee Members:

Senator Lynch directed comments to Mr. Hankins. If you injure the same collar bone three times while riding the horse, you would still be covered under Montana law. But if

you injure the collar bone after the race is over while celebrating your win, you would not be covered. HB 155 has nothing to do with getting multiple injuries on the same part of your body while you are working. Mr. Hankin stated many injuries show up at a later date. The Guild is concerned about the wordage of the bill title.

Senator Keating stated the jockeys are covered under Workers' Compensation while riding. After a win, and a celebration, do jockeys carry medical insurance. Mr. Hankin stated most cases the average rider carries virtually no insurance due to the high premium charges. Once a guild member is outside the racetrack's confines, the insurance coverage is minimum. Senator Keating asked if the jockey can get medical and accident insurance, other than workers' comp for work related injuries. Hankins replied the jockey can get insurance at a minimum level, the cost will exceed \$200 per month. Only two insurance companies will honor the claim.

Closing by Sponsor:

Representative Smith urged passage of 154.

Senator Manning queried the committee about taking executive action on bills heard today. Senator Aklestad received the committee's approval.

DISPOSITION OF HOUSE BILL 154

Discussion:

Senator Aklestad asked Senator Manning if the amendment encompasses the retroactive clause, plus the severability. Yes.

Amendments and Votes:

Senator Manning moved the amendment HB 154. The motion passes unanimously.

Recommendation and Vote:

Senator Manning made a AS AMENDED BE CONCURRED IN recommendation for HB 154. The motion passed unanimously. Senator Manning will carry the bill.

DISPOSITION OF HOUSE BILL 155

Amendment and Vote:

Senator Devlin moved to amend the title of HB 155 to reflect

"nonwork related" on Page 1, line 8. The motion passed unanimously..

Senator Aklestad stated the House amendment is significant, compared to the original language amended into HB 155, leaving a lot of interpretation latitude as to what is meant by "reaching maximum healing". Senator Lynch stated everyone is comfortable with the wording. Senator Aklestad asked Jim Murphy where maximum healing language is defined. Murphy stated maximum healing is always a medical determination used everyday in workers' compensation jargon. It is the key (determination factor) when a person goes to temporary total benefits from partial benefits upon reaching maximum healing. It is not something that is indicated very often. HB 155 uses a term that is used elsewhere in workers' compensation language. The motion to amend passed unanimously.

Recommendation and Vote:

Senator Manning moved to accept the motion AS AMENDED BY CONCURRED IN. The motion passed. Senator Manning will carry HB 155.

Adjournment At: The Labor and Employment Relations
Committee adjourned at 2:10 p.m.



Senator Gary C. Aklestad, Chairman

GCA/mfe

Minutes.228

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE Feb 28, 1989

	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING	X		
SENATOR SAM HOFMAN	X		
SENATOR J.D. LYNCH	X		
SENATOR GERRY DEVLIN	X		
SENATOR BOB PIPINICH	X		
SENATOR DENNIS NATHE			X
SENATOR RICHARD MANNING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR GARY AKLESTAD	X		

(5)

SENATE STANDING COMMITTEE REPORT

February 28, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 155 (third reading copy -- blue), respectfully report that HB 155 be amended and as so amended be concurred in:

Sponsor: Smith (Devlin)

1. Title, line 8.
Strike: "NEW"
Insert: "NONWORK-RELATED"

AND AS AMENDED BE CONCURRED IN

Signed: 
Gary C. Aklestad, Chairman

SENATE

DIVISION TESTIMONYHOUSE BILL 155

AS REPRESENTATIVE SMITH STATED, THE PURPOSE OF THIS BILL IS TO CLARIFY THE LIABILITY OF THE EMPLOYER'S INSURER WHEN THE PREVIOUSLY INJURED CLAIMANT RECEIVES A NEW NON-JOB RELATED INJURY. THE ISSUE WAS WHETHER THE INSURER ON THE ORIGINAL INJURY WAS LIABLE OR WHETHER THE ACCIDENT OR INCIDENT WAS A NEW INJURY AND THE LIABILITY OF THE NEW EMPLOYER'S INSURER. THE SUPREME COURT HAS APPLIED THE FOLLOWING STAND TO DETERMINE WHETHER THE CLAIMANT WAS REINJURED OR AGGRAVATED AN ORIGINAL INJURY.

THE STANDARD APPLIED WAS WHETHER THE CLAIMANT REACHED MAXIMUM HEALING. IF THE CLAIMANT MAY HAVE REACHED MAXIMUM HEALING THE INSURER AT RISK AT THE TIME OF THE ORIGINAL INJURY WAS NO LONGER RESPONSIBLE FOR ANY SUBSEQUENT INJURIES OR CONDITIONS.

THIS STANDARD MAKES GOOD SENSE AND SHOULD BE APPLIED REGARDLESS OF WHETHER THE SUBSEQUENT INJURY IS JOB RELATED OR NOT. IN THE GUILD DECISION, THE SUPREME COURT DIFFERENTIATED BETWEEN A SUBSEQUENT INJURY ON THE JOB vs A NON-JOB RELATED INJURY. THIS DECISION COULD PLACE THE ORIGINAL EMPLOYER'S INSURER AT RISK FOR ANY OTHER FUTURE ACCIDENT WHICH WAS NON-JOB RELATED. IF AN INJURED WORKER IS REINJURED OFF THE JOB, SOME OTHER INSURANCE SHOULD BE RESPONSIBLE, BE THAT HEALTH AND ACCIDENT OR LIABILITY COVERAGE, BUT THE WORKERS' COMPENSATION SYSTEM SHOULD NOT BE AT RISK FOR THIS UNMEASURABLE AND UNKNOWN FUTURE LIABILITY. THE QUESTION IS WHETHER THE SYSTEM CAN AFFORD, AFTER THE CLAIMANT REACHES MAXIMUM HEALING, TO BE LIABLE FOR NON-JOB RELATED INJURIES AT HOME, OR CAR ACCIDENTS, ETC., WHICH MAY HAPPEN IN THE FUTURE.

LABOR COMMITTEE

VISITORS' REGISTER

51st LEGISLATIVE SESSION

DATE: February 28, 1989

LEAVE PREPARED STATEMENTS WITH SECRETARY! PLEASE!!!

[illegible]

1 HOUSE BILL NO. 155

2 INTRODUCED BY SMITH, MARKS, AKLESTAD, THOMAS,

3 HAYNE, OWENS, PETERSON, SPRING

4 BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A
7 WORKERS' COMPENSATION INSURER IS NOT LIABLE FOR BENEFITS ON
8 AN EXISTING CLAIM TO AN EMPLOYEE WHO SUFFERS A NEW
9 NONWORK-RELATED INJURY TO A PREVIOUSLY INJURED PART OF THE
10 BODY IF THE EMPLOYEE PREVIOUSLY REACHED MAXIMUM HEALING; AND
11 AMENDING SECTION 39-71-407, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 39-71-407, MCA, is amended to read:15 **"39-71-407. Liability of insurers -- limitations. (1)**

16 Every insurer is liable for the payment of compensation, in
17 the manner and to the extent hereinafter provided, to an
18 employee of an employer it insures who receives an injury
19 arising out of and in the course of his employment or, in
20 the case of his death from such injury, to his
21 beneficiaries, if any.

22 (2) (a) An insurer is liable for an injury as defined
23 in 39-71-119 if the claimant establishes it is more probable
24 than not that:

25 (i) a claimed injury has occurred; or

1 (ii) a claimed injury aggravated a preexisting
2 condition.

3 (b) Proof that it was medically possible that a
4 claimed injury occurred or that such claimed injury
5 aggravated a preexisting condition is not sufficient to
6 establish liability.

7 (3) An employee who suffers an injury or dies while
8 traveling is not covered by this chapter unless:

9 (a) (i) the employer furnishes the transportation or
10 the employee receives reimbursement from the employer for
11 costs of travel, gas, oil, or lodging as a part of the
12 employee's benefits or employment agreement; and

13 (ii) the travel is necessitated by and on behalf of the
14 employer as an integral part or condition of the employment;
15 or

16 (b) the travel is required by the employer as part of
17 the employee's job duties.

18 (4) An employee is not eligible for benefits otherwise
19 payable under this chapter if the employee's use of alcohol
20 or drugs not prescribed by a physician is the sole and
21 exclusive cause of the injury or death. However, if the
22 employer had knowledge of and failed to attempt to stop the
23 employee's use of alcohol or drugs, this subsection does not
24 apply.

25 ~~(5) An insurer is not liable for the payment of~~

1 ~~compensation or medical benefits on an existing claim if the~~
2 ~~employee receives a new injury, as defined in 39-71-119,~~
3 ~~regardless of whether the new injury arose out of and in the~~
4 ~~course of his employment, if the injury is to the same part~~
5 ~~of the body and the worker previously reached maximum~~
6 ~~healing. An employee who receives a new work-related injury~~
7 ~~shall file a new claim~~ IF A CLAIMANT WHO HAS REACHED MAXIMUM
8 HEALING SUFFERS A SUBSEQUENT NONWORK-RELATED INJURY TO THE
9 SAME PART OF THE BODY, THE WORKERS' COMPENSATION INSURER IS
10 NOT LIABLE FOR ANY COMPENSATION OR MEDICAL BENEFITS CAUSED
11 BY THE SUBSEQUENT NONWORK-RELATED INJURY."

12 NEW SECTION. **Section 2.** Extension of authority. Any
13 existing authority to make rules on the subject of the
14 provisions of [this act] is extended to the provisions of
15 [this act].

-End-